JONES *v.* GEORGIA.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA.

No. 174, Misc. Decided October 16, 1967.

Petitioner appealed his murder conviction on the ground, among others, that the evidence of systematic exclusion of Negroes from grand and petit juries established a prima facie case of discrimination under *Whitus* v. *Georgia,* 385 U. S. 545. The Georgia Supreme Court affirmed because "public officers are presumed to have discharged their sworn official duties," and "we can not assume that the jury commissioners did not eliminate prospective jurors on the basis of their competency to serve, rather than because of racial discrimination." *Held:* The State's burden to explain the "disparity between the percentage of Negroes on the tax digest and those on the venires" was not met by reliance on the stated presumptions.

Certiorari granted; 223 Ga. 157, 154 S. E. 2d 228, reversed and remanded.

Wilbur D. Owens, Jr., for petitioner.

Arthur K. Bolton, Attorney General of Georgia, *G. Ernest Tidwell,* Executive Assistant Attorney General, and *Marion O. Gordon,* Assistant Attorney General, for respondent.

PER CURIAM.

The motion for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted.

Petitioner appealed his conviction for murder to the Georgia Supreme Court where he sought reversal on the ground, among others, that the evidence relevant to his claim of systematic exclusion of Negroes from the grand and petit juries drawn in the county established a prima facie case of the denial of equal protection within our

decision in *Whitus* v. *Georgia,* 385 U. S. 545.* The Georgia Supreme Court affirmed the conviction stating that *Whitus* was distinguishable because "public officers are presumed to have discharged their sworn official duties. . . . Under the testimony in this case we can not assume that the jury commissioners did not eliminate prospective jurors on the basis of their competency to serve, rather than because of racial discrimination." 223 Ga. 157, 162, 154 S. E. 2d 228, 232.

We hold that the burden upon the State to explain "the disparity between the percentage of Negroes on the tax digest and those on the venires," *Whitus, supra,* at 552, was not met by the Georgia Supreme Court's reliance on the stated presumptions. See *Arnold* v. *North Carolina,* 376 U. S. 773; *Eubanks* v. *Louisiana,* 356 U. S. 584; *Williams* v. *Georgia,* 349 U. S. 375; *Avery* v. *Georgia,* 345 U. S. 559; *Cassell* v. *Texas,* 339 U. S. 282; *Norris* v. *Alabama,* 294 U. S. 587. We therefore reverse the judgment of the Georgia Supreme Court and remand for further proceedings not inconsistent with our opinion.

It is so ordered.

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*The record supports the following comparison of the salient facts in *Whitus* and in petitioner's case:

	Whitus	*Petitioner's case*
Over 21 population	42.6% Negro men	30.7% Negro
Jury Commissioners	White (apparently)	White
Source of juror names	Tax Digests separated and identified as to race	3 Tax Digests, two of which separated and identified as to race
Taxpayers	27.1% Negro	19.7% Negro
Negro jurors	9.1% grand jury venire 7.8% petit jury venire	5.0% of jury list and box (1 Negro was on the grand jury which indicted petitioner)
Rebuttal evidence by State	None	None